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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,657

05/17/2006

Olivier Casula

434299-694

9371

46188

7590

08/19/2009

Nixon Peabody LLP
200 Page Mill Road
Palo Alto, CA 94306

EXAMINER

BOR, HELENE CATHERINE

ART UNIT

PAPER NUMBER

3768

MAIL DATE

DELIVERY MODE

08/19/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/579,657	Applicant(s) CASULA ET AL.	
	Examiner HELENE BOR	Art Unit 3768	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

35 U.S.C. 112, 2nd Paragraph

1. Applicant appears to make the argument that the claimed element "means of bringing the elements into contact with the surface of an object" and "means of determining the positions of the multiple elements relative to the object" is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, it is unclear whether the claim element is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph, because the Applicant fails to claim the elements provided to keep the elements in contact with the object being checked.

If applicant wishes to have the claim limitation treated under 35 U.S.C. 112, sixth paragraph, applicant is required to:

- (a) Amend the claim to include the phrase "means for" or "step for" in accordance with these guidelines: the phrase "means for" or "step for" must be modified by functional language and the phrase must **not** be modified by sufficient structure, material, or acts for performing the claimed function; or
- (b) Show that the claim limitation is written as a function to be performed and the claim does **not** recite sufficient structure, material, or acts for performing the claimed function which would preclude application of 35 U.S.C. 112, sixth paragraph. For more information, see MPEP 2181.

Claim Rejections - 35 USC § 102

2. The rejection of Claims 1-6 & 12-14 under 35 U.S.C. 102(b) as being anticipated by Bolomey et al. (US Patent No. 6,424,597) is hereby maintained.

Claim Rejections - 35 USC § 103

3. The rejection of Claims 7-11 under 35 U.S.C. 103(a) as being unpatentable over Bolomey et al. (US Patent No. 6,424,597) as applied to claim 1-6 & 12-14 above, and further in view of Bjorner et al. (US Patent No. 5,485,263) is hereby maintained.

Double Patenting

4. The rejection of Claims 1-2 & 13 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over patented claim 1 & 3 of U.S. Patent No. 6,424,597 is hereby maintained.

Response to Arguments

5. Applicant's arguments, see Page 6, filed 04/27/2009, with respect to the Claim Objections have been fully considered and are persuasive. The Objections of the Claims has been withdrawn.

6. Applicant's arguments, see Page 6, filed 04/27/2009, with respect to U.S.C. 35 § 112, Second Paragraph Rejections have been fully considered and are persuasive. The U.S.C. 35 § 112, Second Paragraph Rejection of the Claims has been withdrawn. However, due to the Applicant's arguments, see Page 7, clarification is needed regarding the Applicant's intention to invoke 35 U.S.C. § 112, Sixth Paragraph and the rejection pending under 35 U.S.C. § 112, Second Paragraph, addresses that.

7. Applicant's arguments filed 04/27/2009 have been fully considered but they are not persuasive. The Applicant submitted arguments that Bolomey provided nothing to keep the elements in contact with the object that is being checked during displacements of the transducer during the check and assure coupling with the object. The Examiner

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respectfully disagrees. The Examiner notes that the Applicant appears to be asserting that "means of bring the elements into contact with the surface of the object to be checked" refers to specific elements as described within the Specification (such as elements 8, 18 & 20). However without properly invoking 35 U.S.C. 112, Sixth Paragraph, the claim language will be interpreted in light of the Specification but not with details from the Specification read into the claims. The Examiner contends that "means of bring the elements into contact with the surface of the object to be checked" can be broadly interpreted to read on Bolomey as disclosed in Figure 6, Element 56, which performs a similar function. The Applicant stated, "The fact that in the presently claimed invention the multiple elements of the transducer are rigid ultrasound emitting elements and are mechanically assembled to each other so as to form an articulated structure, leads to a simplified and improved coupling between emitters...". The Examiner notes that in Bolomey, Col. 3, Line 65-67, there is disclosed the same feature almost verbatim. The rejections are deemed proper and are hereby maintained.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HELENE BOR whose telephone number is (571)272-2947. The examiner can normally be reached on M-T 8:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le can be reached on (571)272-0823. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. B./
Examiner, Art Unit 3768

/Eric F Winakur/
Primary Examiner, Art Unit 3768